

GAS FRANCHISE ORDINANCE

ORDINANCE NO. 2021-19

CITY OF MINNETONKA, HENNEPIN COUNTY, MINNESOTA

AN ORDINANCE GRANTING CENTERPOINT ENERGY RESOURCES CORP., d/b/a CENTERPOINT ENERGY MINNESOTA GAS ("CENTERPOINT ENERGY"), ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY OF MINNETONKA, HENNEPIN COUNTY, MINNESOTA, FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF

THE CITY OF MINNETONKA ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

City. The City of Minnetonka, County of Hennepin, State of Minnesota.

City Utility System. Facilities used for providing public utility service owned or operated by City or agency thereof, including sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.

Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate gas retail rates now vested in the Minnesota Public Utilities Commission.

Company. CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas ("CenterPoint Energy") its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this Franchise.

Gas Energy. Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.

Gas Facilities. Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing Gas Energy for retail or wholesale use.

Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Vice President Regional Operations - Minnesota, 505 Nicollet Mall, Minneapolis, Minnesota, 55402. Notice to the City shall be mailed to City of Minnetonka, City Manager, 14600 Minnetonka Boulevard, Minnetonka, MN 55345. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.

Ordinance. This gas franchise ordinance, also referred to as the Franchise.

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Public Way. Any public right-of-way within the City as defined by Minnesota Statutes, Section 237.162, subd. 3.

Public Ground. Land owned or otherwise controlled by the City for park, open space or similar public purpose, which is held for use in common by the public and not a Public Way.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of twenty (20) years from the Effective Date of this Ordinance, the right to import, manufacture, distribute and sell Gas Energy for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future and also the right to transport Gas Energy through the limits of the City for use outside of the City limits. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements adopted consistent with state law and with the further provisions of this franchise agreement.

2.2 **Effective Date; Written Acceptance.** This Franchise shall be in force and effect on the later of (a) the passage of this Ordinance and publication as required by law and its acceptance by Company or (b) February 11, 2022. If Company does not file a written acceptance with the City within sixty (60) days after the date the City Council adopts this Ordinance, or otherwise inform the City, at any time, that the Company does not accept this Franchise, the City Council may pursue any remedy available in law or equity, including but not limited to revoking this Franchise by resolution.

2.3. **Service and Gas Rates.** To the extent provided by law, the service to be provided and the rates to be charged by Company for Gas Energy in City are subject to the exclusive jurisdiction of the Commission.

2.4. **Publication Expense.** Company shall reimburse the City for the expense of publication of this Ordinance.

2.5. **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within thirty (30) days of the written Notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within thirty (30) days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this Franchise or for such other relief as may be permitted by law or equity.

2.6. **Continuation of Franchise.** If the City and the Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until ninety (90) days after the City or the Company serves written Notice to the other party of its intention to allow Franchise to expire. However, in no event shall this Franchise continue for more than one (1) year after expiration of the twenty (20) year term set forth in Section 2.1.

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SECTION 3. LOCATION, OTHER REGULATIONS.

3.1. **Location of Facilities.** Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to reasonable regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Franchise.

3.2. **Field Locations.** Company shall provide field locations for its Gas Facilities within City, consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3. **Street Openings.** Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by the Minnetonka City Code as it may be amended from time to time, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other public right-of-way users for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities, and (ii) Company gives telephone, email or similar Notice to the City before commencement of the emergency repair, if reasonably possible. Within two (2) business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.4. **Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the Public Way or Public Ground in accordance to as good a condition as formerly existed, and shall maintain the paved surfaces in good condition for two (2) years thereafter. All work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration of the Public Way or Public Ground at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.3.

3.5. **Avoid Damage to Gas Facilities.** The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons, property, or the elements. The City must take protective measures when the City performs work near the Gas Facilities, as required by Minnesota Statute 216D.05.

3.6. **Notice of Improvements to Streets.** The City will give Company reasonable written Notice of plans for improvements to Public Ways and Public Grounds where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways or Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The Notice will be given to Company a sufficient length of time,

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considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary. In an emergency situation, the City shall notify Company by telephone and email to the representatives designated by Company, before commencing the emergency work, if reasonably possible, but in any event as soon as practicable.

3.7 **Mapping Information.** Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100.

3.8. **Emergency Response.** As emergency first-responders, when a public safety concern exists both the City and Company shall respond to gas emergencies within the City without additional direct fee or expense to either City or Company.

SECTION 4. RELOCATIONS.

4.1. **Relocation in Public Ways.** Company and City shall comply with Minnesota Rules, part 7819.3100 and applicable City ordinances consistent with law.

4.2. **Relocation in Public Grounds.** The City may require Company at Company's expense to relocate or remove its Gas Facilities from Public Ground upon a finding by the City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Relocation shall comply with applicable city ordinances consistent with law.

4.2. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes Sections 161.45 and 161.46, as applicable.

SECTION 5. INDEMNIFICATION.

5.1. **Indemnity of City.** Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for that portion of any losses or claims occasioned through its own negligence or otherwise wrongful act or omission except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

5.2. **Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written Notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such Notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise agreement shall not be

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interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

SECTION 6. VACATION OF PUBLIC WAYS.

The City shall give Company at least two (2) weeks prior written Notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules 7819.3100 and Minnesota Rules 7819.3200 and applicable ordinances consistent with law.

SECTION 7. CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 8. FRANCHISE FEE.

8.1. **Form.** During the term of the franchise hereby granted, and in addition to permit fees being imposed or that the City has a right to impose, the City may charge the Company a franchise fee. The fee may be (i) a percentage of gross revenues received by the Company for its operations as a public utility within the City, or (ii) a flat fee per customer based on metered service to retail customers within the City or on some other similar basis, or (iii) a fee based on units of energy delivered to any class of retail customers within the corporate limits of the City. The method of imposing the franchise fee, the percentage of revenue rate, or the flat rate based on metered service may differ for each customer class or combine the methods described in (i) – (iii) above in assessing the fee. The City shall seek to use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City and be consistent with applicable Minnesota Public Utility Commission requirements. If the Company claims that the City's required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company shall provide a formula that will produce a substantially similar fee amount to the City. The City will attempt to accommodate the Company but is under no franchise obligation to adopt the Company-proposed franchise fee formula and each review will not delay the implementation of the City-imposed fee. The City and Company have agreed that the franchise fee collected by the Company and paid to City in accordance with this Section 9 shall initially be equal to the amounts indicated in the Fee Schedule adopted by Ordinance No. 2018-16 and set forth again below:

<u>Class</u>	<u>Amount per Account Per Month (\$)</u>
Residential	\$ 4.50 per month
Firm A	\$ 4.50 per month
Firm B	\$13.50 per month
Firm C	\$45.00 per month
Small Volume, Dual Fuel A ("SVDF A")	\$45.00 per month
Small Volume, Dual Fuel B ("SVDF B")	\$45.00 per month
Large Volume, Dual Fuel ("LVDF")	\$45.00 per month

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8.2. **Separate Ordinance.** Any change to the franchise fee established by the Fee Schedule set out in Section 8.1 above shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least ninety (90) days after written Notice enclosing a copy of the duly adopted and approved ordinance has been served upon the Company by Certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the city in regard to the interpretation of, or enforcement of, the separate ordinance. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice and acceptance requirements and not occur more often than once within any twelve (12) consecutive calendar months.

8.3. **Condition of Fee.** The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of energy within the City by any other energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through an agreed-upon franchise. The “same or substantially similar amount” shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers, the percentage of the annual bill represented by the amount collected for franchise fee purposes. If Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 8.3, the foregoing conditions will be waived to the extent of such written consent.

8.4. **Collection of Fee.** The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City and be consistent with applicable Minnesota Public Utility requirements. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The time and manner of collecting the franchise fee is subject to the approval of the Commission, and Company agrees not to take any action to delay or interfere with Commission approval. The Company shall not be responsible to pay City fees that Company is unable to collect under Commission rules or order. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company’s determination of the franchise fee payments. In addition, Company agrees to provide, upon City request, but not more than annually, a statement summarizing how the franchise fee payment was determined, including information showing any adjustments made to account for any write-offs, recoveries or refunds.

8.5. **Continuation of Franchise Fee.** If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon notwithstanding the franchise expiration as provided in section 2.6 above.

SECTION 9. ABANDONED FACILITIES.

The Company shall comply with Minnesota Statutes, Section 216D.01, et seq and Minnesota Rules, Part 7819.3300, as they may be amended from time to time, and reasonable regulations as may be imposed by the City pursuant to an ordinance adopted consistent with state law, to the extent not inconsistent with a specific term of this Franchise. The Company shall maintain records describing the exact location of all abandoned and retired Gas Facilities within the Public Ways and Public Grounds, produce such records at the City’s request and comply with the location requirements of Minnesota Statutes, Section 216D.04 with respect to all Gas Facilities, including abandoned and retired Facilities.

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SECTION 10. SAFETY AND INFRASTRUCTURE REPORTING.

The Company and the City shall meet annually at a mutually convenient time to discuss items of concern or interest relating to the Company's safety and service reliability in the previous year, compared to other service areas, infrastructure plans for the coming year and other matters raised by the City or the Company. At the annual meeting, City and Company each will identify possible, known infrastructure projects scheduled for construction or installation in the upcoming construction season. At City's request for records of abandoned facilities in a specific location, Company will provide reasonably available records to City in the format in which, at the time of the request, Company keeps the records.

SECTION 11. PROVISIONS OF ORDINANCE.

11.1. **Severability.** Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

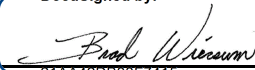
11.2. **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties. No provisions herein shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third-party beneficiary of this Ordinance or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 12. AMENDMENT PROCEDURE.

Either party may propose at any time that this Franchise Ordinance be amended. This Franchise Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within sixty (60) days after the effective date of the amendatory ordinance. This amendatory procedure is subject, however, to the City's police power and franchise rights under Minnesota Statutes, Sections 216B.36 and 301B.01, which rights are not waived hereby.

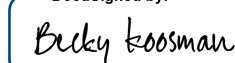
Passed and approved: Oct. 4, 2021.

DocuSigned by:


21AA42DB33F7415
Brad Wiersum, Mayor

Attest:

DocuSigned by:


C8FF609054C54E1
Becky Koosman, City Clerk

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Action on this Ordinance:

Date of introduction: Sept. 13, 2021
Date of adoption: Oct. 4, 2021
Motion for adoption: Kirk
Seconded by: Carter
Voted in favor of: Schaeppi-Coakley-Kirk-Schack-Carter-Calvert-Wiersum
Voted against: None
Abstained: None
Absent: None
Ordinance adopted.

Date of publication: Oct. 14, 2021

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on Oct. 4, 2021.

Becky Koosman, City Clerk